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*Committee on Civil Liberties, Justice and Home Affairs*

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**2009/2241(INI)**

27.4.2010

## **OPINION**

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Constitutional Affairs

on institutional aspects of accession by the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms (2009/2241(INI))

Rapporteur (\*): Kinga Gál

(\*) Procedure with associated committees – Rule 50 of the Rules of Procedure

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## SUGGESTIONS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Welcomes the important achievement represented by the Treaty of Lisbon, which makes the Charter of Fundamental Rights of the European Union ('the Charter') binding, and creates an obligation, pursuant to Article 6(2) TEU, for the EU to accede to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); welcomes, furthermore, the forthcoming entry into force of Protocol No 14 to the ECHR, set for 1 June 2010, under which the EU may accede to the ECHR;
2. Notes that, while all the Member States have already ratified the ECHR, the accession to this instrument of the EU as a legal entity will not affect the situation of the Member States vis-à-vis the ECHR, pursuant to Protocol No 8 to the Treaty of Lisbon; considers that it will give the new momentum envisaged for over a decade and will be of great political and legal importance in the creation of a continent-wide area of human rights and that, furthermore, it will foster the consolidation and strengthening of human rights in Europe and help to reinforce relations between the EU and the 'wider Europe', by bringing a new dynamic into the field of human rights; considers that it should also help to enhance the credibility of the EU in the field of human rights protection worldwide;
3. Emphasises the significance of the ECHR and the case law of the European Court of Human Rights (ECtHR) in providing a legal framework and guiding principles for current and future EU action in the domain of civil liberties, justice and home affairs, especially in the light of the new forms of integration and harmonisation in civil liberties, justice and home affairs initiated by the entry into force of the Treaty of Lisbon and the adoption of the Stockholm Programme;
4. Stresses that the accession will, first and foremost, contribute to a more coherent human rights system within the EU; takes the view that the accession will strengthen the EU's credibility in the eyes of its own citizens in the field of human rights protection, ensuring full and effective respect for fundamental rights whenever EU law is in play;
5. Underlines that, after the accession, the competence of the ECtHR when judging matters coming under the ECHR may not be contested on the basis of the internal structure of EU law; underlines also that the competence of the ECtHR must not be limited to European citizens or to the geographical area of the European Union (for example in the case of missions or delegations);
6. Stresses that, following the accession, the ECHR will constitute the minimum standard of protection for human rights and fundamental freedoms in Europe and will be crucial, in particular, in cases where the protection granted by the EU is inferior to that provided under the ECHR; points out that the ECHR reinforces protection of the rights recognised by the Charter that come within its scope and that the Charter also recognises other rights and principles, which are not contained in the ECHR, but in the additional protocols and in instruments related to the ECHR;

7. Notes that EU accession to the ECHR will provide an additional mechanism for enforcing human rights, namely the possibility of lodging a complaint with the ECtHR in relation to an act, or a failure to act, by an EU institution or a Member State implementing EU law and falling within the remit of the ECHR; stresses, however, that this does not alter the present system of jurisdiction of the Court of Justice of the European Union (ECJ), nor that of the European Court of Human Rights, and that the requirement that all domestic judicial remedies should have been exhausted will remain the condition for the admissibility of any application; calls for applications and complaints to be dealt with in a reasonable period of time; encourages the Commission to provide some guidance, in consultation with the ECJ and the ECtHR, on what constitutes the appropriate domestic remedy within the Union and on preliminary rulings under EU law; stresses, in this context, that it will be necessary to ensure that Member State courts refer cases to the ECJ when there is arguably a fundamental rights issue at hand;
8. Stresses that, at the same time, the accession will require enhanced cooperation between national courts, the ECJ and the ECtHR in protecting fundamental rights; points out that cooperation between the two European courts will further the development of a coherent case-law system in the field of human rights;
9. Points out that a number of legal, technical and institutional issues are still outstanding and will need to be addressed in the mandate to be adopted under Article 218 TFEU, as well as in the negotiations with the Council of Europe on accession to the ECHR; calls on the Commission and the Council to ensure that:
  - the scope of the accession is precisely defined in the mandate; the EU shall accede, at least, to all those Additional Protocols to the ECHR which complement the rights enshrined in the ECHR and which have already been ratified by all the EU Member States, thus forming part of the EU's human rights corpus; in this regard, also invites Member States to ratify all those additional protocols to the ECHR which refer to the rights enshrined in the Charter of Fundamental Rights and are accordingly applicable to the EU; furthermore, accession to the revised European Social Charter and other relevant Council of Europe human rights treaties should be taken into consideration;
  - the EU is properly represented, and participates, in the Council of Europe's bodies; that, although with the accession to the ECHR the EU will not become a member of the Council of Europe, it is represented on all those human rights bodies where, as a result of the accession, EU matters are affected (such as the CPT, ECRI, CEPEJ and CDDH), and in the Committee of Ministers, at least when supervising the execution of judgments on EU fundamental rights-related matters, while the European Parliament participates and is represented in the procedure to elect a judge to the ECtHR – at EU level when the EU candidates for the post are appointed and in the PACE when the judge is elected;
  - the relations between the ECJ and the ECtHR are clarified, leaving the two courts the necessary flexibility to determine how best to cooperate in order to achieve an enhanced regular dialogue and, in addition, potentially contributing to the

development of the abovementioned case-law system;

- the problems faced by the ECtHR are dealt with and relieved through EU support; that EU accession to the ECHR, rather than diminishing its effectiveness, should lead to an improved system; that the EU and its Member States ensure respect for human rights and fundamental freedoms and make sure that internal judicial remedies are effective, in accordance with the principle of subsidiarity laid down in the 1969 Vienna Convention on the Law of Treaties, in order to prevent the over-burdening of the ECtHR with repetitive applications or unnecessary referrals; and that – and this is crucially important – the accession of the EU coincides with the reform of the ECtHR;
10. Emphasises that, in tandem with the necessary political commitment, it is of the utmost importance that adequate answers and solutions be found to the main technical questions in order to enable the EU's accession to the ECHR to be used for the benefit of citizens; points out that unresolved and unclear details may create confusion and endanger the very purpose of the accession; stresses, however, that technical impediments should not be allowed to delay the process;
  11. Stresses that, as accession to the ECHR affects not only the EU institutions, but also the Union's citizens, the European Parliament must be consulted and involved throughout the negotiation process, and must be associated and immediately and fully informed at all stages of the negotiations, as provided for in Article 218(10) TEU;
  12. Stresses that it is important to have an informal body in order to coordinate information sharing between the European Parliament and the Parliamentary Assembly of the Council of Europe;
  13. Suggests that, in order to raise awareness of the added value of the accession to citizens, the Council of Europe and the EU should develop guidelines with clear explanations of all the implications and effects of accession; maintains that the Commission and Member States should provide EU citizens with information ensuring that they are fully aware of what the additional mechanism means and how to use it adequately;
  14. Welcomes the commitment shown by the current Spanish Presidency in treating the accession as a 'matter of urgency' and the positive and cooperative attitude of the Council of Europe in this respect; calls on the Belgian and Hungarian Presidencies to do their utmost to finalise the accession at the earliest suitable opportunity and in as simple and accessible a manner as possible, so that EU citizens may benefit as soon as possible from the Union's accession to the ECHR;
  15. Notes that, following the EU's accession to the ECHR, it might occur that both the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (ECJ) have jurisdiction in certain cases, and points out that simultaneous referrals to the two Courts will not be admissible.

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	27.4.2010
<b>Result of final vote</b>	+:           41 -:            1 0:            0
<b>Members present for the final vote</b>	Roberta Angelilli, Vilija Blinkevičiūtė, Rita Borsellino, Emine Bozkurt, Simon Busuttil, Philip Claeys, Carlos Coelho, Cornelis de Jong, Agustín Díaz de Mera García Consuegra, Cornelia Ernst, Hélène Flautre, Kinga Gál, Kinga Göncz, Sylvie Guillaume, Ágnes Hankiss, Anna Hedh, Sophia in 't Veld, Teresa Jiménez-Becerril Barrio, Clemente Mastella, Louis Michel, Claude Moraes, Antigoni Papadopoulou, Georgios Papanikolaou, Carmen Romero López, Judith Sargentini, Birgit Sippel, Csaba Sógor, Renate Sommer, Rui Tavares, Wim van de Camp, Axel Voss, Tatjana Ždanoka
<b>Substitute(s) present for the final vote</b>	Alexander Alvaro, Edit Bauer, Anna Maria Corazza Bildt, Ioan Enciu, Nadja Hirsch, Franziska Keller, Petru Constantin Luhan, Mariya Nedelcheva, Norica Nicolai, Cecilia Wikström